SINGLE BENCH

(4)

CF 1002 (E)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

W.P (S). NO. 209 /2007

PETITIONER

Anil Kumar Hazari Aged about 47 years S/o Badri Prasad Hazari At present working as fisheries Inspector in the office of Assistant Director, Fisheries Dhamtari Distt- Dhamtari (CG).

P.R. No. 20102
Presented by Shri N. P. Kosta
dated 31/1/07

VERSUS

RESPONDENTS

1. State of Chhattisgarh Through the Secretary Fisheries Department, D. K. S. Bhawan Raipur. (CG)

2. Director, Fisheries Department, Raipur Distrit Raipur (CG)

3. Assistant Director, Fisheries Department, Dhamtari District Dhamtari (CG)

4. Assistant Director, Fisheries Department Rajnandgaon District Rajnandgaon (CG).

5. Shri R. M. Qureshi, Inspector, Fisheries Department, Office of Assistant Director Fiesheries Dhamtari District Dhamtari (CG)

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(5)

(12)

PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE WRITS OF MANDAMUS AND CERTIORARY AND FOR OTHER SUITABLE WRITS AND DIRECTIONS :-

(43)

HIGH COURT OF CHHATTISGARH AT BILASPUR

SINGLE BENCH : HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION (S.) NO.289 OF 2007

Petitioner : Anil Kumar Hazari

versus

Respondents : State of Chhattisgarh and others

Present : Mr. Vishnu Koshta, counsel for the petitioner.
Mr. Sushil Dubey, Government Advocate for the State/respondents No.1 to 4.

ORDER

(Passed on 19th Day of January, 2007)

The petitioner, in the instant petition, impugns the order dated 14-11-2006 (Annexure P-3), whereby the petitioner has been transferred from Dhamtari to Rajnandgaon.

2. The petitioner impugns the order dated 14-11-2006 (Annexure P-3) on the ground that the order is tainted with malice as the same was passed to accommodate and adjust respondent No.5. The impugned order is contrary to the transfer policy dated 26-5-2006 (Annexure P-6). The transfer order is arbitrary, unjustified, unreasonable and without public interest or administrative exigency.

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3. Learned counsel appearing for the State/respondents No.1 to 4, on the contrary, submitted that the order passed was due to the administrative exigency in public interest and the transfer order contains not only the names of petitioner and respondent No.5, but, by the said transfer order, placement of six more persons were effected. Learned counsel further submitted that the transfer policy dated 26-5-2006 (Annexure P-6) clearly provides for transfer of employee in coordination of the Chief Minister through the Chief Secretary. In the present case the impugned order was passed in coordination with the Chief Minister as is evident from the impugned order itself which was endorsed to the Secretary to the Chief Minister.

4. It was further contended that the averment of the petitioner to the effect that the transfer order was passed in exercise of the powers tainted with *mala fide*, malice, unreasonableness, contrary to the transfer policy, is without any basis as there is no material to substantiate the averments except the bold statements made in the petition.

5. Having heard learned counsel for the parties and having perused the documents annexed thereto, it is evident that the petitioner has failed to establish any *mala fide* or malice against the respondents. The transfer order was passed due to administrative exigency in the public interest. There is no violation of the transfer policy dated 26-5-2006 (Annexure P-6), which clearly provides for transfer of an employee in coordination with the Chief Minister. The present impugned order is bearing endorsement to the Secretary to the Chief Minister as

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required under the transfer policy. Thus, there is no breach of the transfer policy.

6. I have examined the facts of the case. The allegations, stated above, have not been established in the facts of the case. The Supreme Court, in the case of ***Kendriya Vidyalaya Sangathan*** vs. ***Damodar Prasad Pandey and others***[1], observed as under :-

> "4. Transfer which is an incidence of service is not to be interfered with by courts unless it is shown to be clearly arbitrary or visited by mala fide or infraction of any prescribed norms of principles governing the transfer (see *Abani Kanta Ray* v. *State of Orissa*[1]. Unless the order of transfer is visited by mala fide or is made in violation of operative guidelines, the court cannot interfere with it (see *Union of India* v. *S.L. Abbas*[2]). Who should be transferred and posted where is a matter for the administrative authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any operative guidelines or rules the courts should not ordinarily interfere with it. In *Union of India* v. *Janardhan Debanath*[3] it was observed as follows : (SCC p. 250, para 9)
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> "No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is

shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a mater of routine, as though they were the appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in *National Hydroelectric Power Corpn. Ltd.* v. *Shri Bhagwan*[4]."

7. It is well settled principle of law that transfer is an incident of service and it is for the employer to decide as to where a particular officer/employee be posted keeping in view public interest as well as administrative exigency. This Court has limited jurisdiction to interfere in the transfer matter and this Court can interfere only in the case of proved *mala fide*, non-competence of authority passing the transfer order and transfer order not being in conformity with the rules and regulations. The petitioner/employee cannot be permitted to remain at one place, forever, by Court orders.

8. The petitioner has not made out any case for interference by this Court in the present transfer.

9. For the reasons stated hereinabove and as a result, this petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

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1 (2004) 12 SCC 299